

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1002 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PUNIBEN BHOJABHAI

Versus

LEGAL HEIRS OF DATIYABHAI BAVA

Appearance:

MS SEJAL K MANDAVIA for Petitioner
MR PJ KANABAR for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 23/11/1999

ORAL JUDGEMENT

1. Rule. Shri Kanabar waives service of rule on behalf of the respondents. Looking to the nature of the case and particularly the fact that this revision application under section 115 C.P.C. arises in the matter of grant of temporary injunction, the same is taken up for final hearing today.
2. The plaintiff by this revision application under section 115 challenges the order of the learned trial

court dated 7-5-1999 under which it has rejected the application filed by the plaintiff to decide first the application filed by the plaintiff for contempt of the order passed by the court below.

3. Learned counsel for the petitioner contended that the trial court has committed a serious error of jurisdiction to reject the application of the petitioner. It is a case where first the court has to decide the contempt application as the respondents committed contempt of the court's order. First to decide Ex.5 and to defer the decision on the contempt application is against the well settled law and for this she made reference to some of the decisions of the court.

4. Learned counsel for the respondents strongly opposed this revision application.

5. Having given my thoughtful consideration to the submissions made by the learned counsel for the parties, I am satisfied that the petitioner has no case on merits. It is not in dispute that ex-parte injunction has been granted by the trial court, i.e. without notice and opportunity of hearing to the respondent. The respondents are claiming themselves to be in possession. What the petitioner is attempting to say is that the respondents committed contempt of the court's order and they may be punished. In such matter where ex-parte interim injunction is granted the contempt proceedings are initiated and same are decided first then it will amount to penalising the party without hearing him on merits of his claim. Ex-parte interim injunction is only there and therefrom it can not be accepted that what the petitioner is stating is correct. It is only an ex-parte order made and it is always subject to challenge by the other side and they have right to put their case. There is all possibility that the court may come to the conclusion that it is not the case where injunction has to be granted. In such matter, if this course is permitted as what it is desired by the petitioner, the possibility of abusing the process of the court can not be overruled. Unscrupulous litigations will take undue benefit or may abuse the process of the court in the garb of ex-parte interim injunction granted to take the possession of the land. Order 39 after amendment of C.P.C, 1976 makes it clear that the rule should have been not to grant any ex-parte interim injunction without notice to the other side. Only in exceptional case as provided under Order 39 of the C.P.C. this course may be taken and legislature provided further a check that where this course is adopted, the application has to be decided

finally within 30 days. I fail to see any justification in the approach of the petitioner to insist to the court for decision on the application filed by him to punish the respondents for committing the contempt of court's order first. The decisions on which reliance has been placed are of little help to the petitioner in this case. The matter would have been different where injunction has been granted after hearing the respondent but not in a case where it is ex-parte interim relief granted. Learned court has not committed any error whatsoever much less a material irregularity in exercise of its jurisdiction in passing of the impugned order, which calls for the interference of this court.

6. In the result, this revision application fails and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.1000/- as costs of this revision application to the respondents.

zgs/-